

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding)
for New Generating Capacity in)
Hawaii.)
_____)

DOCKET NO. 03-0372

ORDER NO. 23298

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2007 MAR 15 A 8:35

RECEIVED

Filed March 14, 2007
At 10 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Investigate Competitive Bidding))
for New Generating Capacity in)
Hawaii.)
_____)

Docket No. 03-0372

Order No. **23298**

ORDER

By this Order, the commission grants the Motion for Exemption from the Framework for Competitive Bidding, filed by the KAUAI ISLAND UTILITY COOPERATIVE ("KIUC") on February 13, 2007.¹ Unless ordered or directed otherwise, KIUC shall be exempt from the Framework for Competitive Bidding adopted by the commission on December 8, 2006;² subject to the commission's right to reexamine at any time the exemption granted herein,

¹KIUC's Motion for an Exemption from the Framework for Competitive Bidding Dated December 8, 2006 and from the Other Additional Regulatory Requirements Established Under Said Framework Pursuant to the Commission's Decision and Order No. 23121; Memorandum in Support; Declaration of Randall J. Hee, P.E.; and Certificate of Service, filed on February 13, 2007 (collectively, "Motion for Exemption from the CB Framework").

The Parties are HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED (collectively, the "HECO Companies"), KIUC, HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

²Decision and Order No. 23121, filed on December 8, 2006, with the Framework for Competitive Bidding, dated December 8, 2006 ("CB Framework"), attached.

consistent with the public interest or any change in circumstances involving KIUC's ownership structure.

I.

Background

On December 8, 2006, the commission adopted its CB Framework as a mechanism for acquiring or building new energy generation in the State of Hawaii.³ Specifically, the CB Framework outlines a comprehensive mechanism for the electric utilities to acquire a future generation resource or a block of generation resources under the competitive bidding process. As part of the implementation process governing competitive bidding, Decision and Order No. 23121 requires the electric utilities to file: (1) their proposed tariffs containing procedures for interconnection and transmission upgrades within ninety days from December 8, 2006; and (2) their proposed Codes of Conduct within one hundred and eighty days from December 8, 2006, or prior to the commencement of any competitive bidding process under the CB Framework (collectively, "Ordering Paragraphs No. 2 and No. 3").⁴

On February 13, 2007, KIUC filed its Motion for Exemption from the CB Framework, pursuant to Part II.A.5 of the CB Framework and Hawaii Administrative Rules ("HAR") § 6-61-41.

³See id.

⁴Decision and Order No. 23121, at 46, ¶¶ 2 - 3.

The HECO Companies, HREA, and the Consumer Advocate did not file any responses to KIUC's motion.⁵

II.

Discussion

Part II.A.5 of the CB Framework provides:

Exemption - ownership structure of an electric utility. Upon a showing that an entity has an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new generation projects through competitive bidding, the Commission will exempt such entity from this Framework.

CB Framework, Part II.A.5.

In Decision and Order No. 22588, filed on June 30, 2006, the commission discussed the exemption criteria as follows:

Exemption for Organizations in Which There is No Substantial Conflict Between Owner Interest and Customer Interest

Part II.A.5 of the Framework authorizes exemption from the Framework for organizations that have an ownership structure in which there is no substantial difference in economic interests between its owners and its customers, such that the electric utility has no disincentive to pursue new generation projects through competitive bidding. This language intends to draw a distinction between an investor-owned utility and a cooperatively-owned entity. In the former case, the utility's financial interest will tend to favor, all else being equal, a rate-base solution rather than a purchase solution. That tendency creates a potential conflict between shareholder interest and ratepayer interest.

⁵Given the methods of service, any responses to KIUC's Motion for Exemption from the CB Framework were due by February 21, 2007, for the Consumer Advocate, and by February 23, 2007, for the HECO Companies and HREA, pursuant to HAR §§ 6-61-21, 6-61-22, and 6-61-41(c).

In the latter case, where most of the owners are also the customers, this conflict is smaller or absent. While a cooperative-like entity, to the extent it is treated as a "public utility" under Hawaii law, might still be subject to commission regulation, such regulation need not include this Framework. Under the commission's rationale, there is no reason to assume that such an organization will make decisions that favor owners over customers. Nonetheless, the commission will reexamine the exemption granted, should such a conflict arise in the future.

Decision and Order No. 22588, Section III(A)(3), at 17 - 18.

KIUC seeks the commission's approval for an exemption from: (1) the CB Framework; and (2) the related regulatory requirements set forth in Decision and Order No. 23121, Ordering Paragraphs No. 2 and No. 3. In the alternative, "if the Commission denies KIUC's request for an exemption, or if the Commission is unable to render a decision on this Motion prior to KIUC's first regulatory requirement deadline of March 8, 2007, KIUC also requests an extension of time to comply with the requirements set forth in the CB Framework and the related requirements set forth [in Ordering Paragraphs No. 2 and No. 3], until one hundred and eighty (180) days following the issuance of a final determination on this Motion."⁶

In seeking the commission's approval for an exemption from the CB Framework, KIUC contends that as a non-profit cooperative entity, it has an ownership structure in which there is no substantial difference in economic interests between its member owners and its customers, such that KIUC has no

⁶KIUC's Memorandum in Support, at 3 - 4; see also KIUC's Motion for Exemption from the CB Framework, at 1 n.1.

disincentive to pursue new generation projects through competitive bidding. In particular, KIUC asserts:

1. As a member-owned, non-profit cooperative entity, all electric customers on the island of Kauai are members/owners of KIUC, unless a customer elects against becoming a member/owner. Presently, substantially all of Kauai's approximately 34,670 current electric customers are members of KIUC.

2. Unlike an investor-owned utility, KIUC does not have to satisfy the needs of any shareholders or deal with the natural tension or conflict that exists between shareholders and ratepayers. Instead, as a cooperative, KIUC seeks to meet the needs of its owners/members who are also its customers.

3. Any remaining monies after all expenses have been paid each year (i.e., the margin between income and expenses) are designated as the members' patronage capital. These net margins are distributed annually to all members in the form of cash or credits to the member's patronage capital account, or any combination thereof, in proportion to the value or quantity of the services purchased by the member from KIUC during the applicable fiscal year.

KIUC also contends that an exemption from the CB Framework and related regulatory requirements are reasonable and consistent with the public interest. In this regard, KIUC asserts that sufficient protections are already in place for KIUC that obviate the need for commission involvement or oversight of

the competitive bidding process via the CB Framework. As noted by KIUC:

1. In general, KIUC is required by the Rural Utilities Service to utilize competitive procurement in obtaining its goods and services, except under certain circumstances.

2. Due to its non-profit cooperative structure, KIUC has access to low-cost funding through its lenders that can assist in keeping bids as low as possible, or in the alternative, to allow KIUC to purchase its own generation addition under a time and material contract at a lower price than any of the bidders.

3. KIUC's Board of Directors has a fiduciary responsibility to its members/customers that includes policy-making involving "financial decisions that ensure that equity and efficiency considerations, encouragement of competitive efficiency options and new technologies, lower costs through competition, more choices, reliable supplies, and a level playing field on which all generation options could compete."⁷

Here, the commission finds that KIUC has met its burden of showing that it has an ownership structure in which there is no substantial difference in economic interests between its owners and customers, such that KIUC appears to have no disincentive to pursue new generation projects through competitive bidding. Specifically, KIUC's ownership structure and economic interest generally favor the competitive procurement process in obtaining goods and services, to encourage cost and

⁷KIUC's Memorandum in Support, at 7.

technological efficiencies, such that any cost savings derived from the competitive bidding process for new generation projects will ultimately be returned to KIUC's member-owners in the form of patronage capital. Accordingly, the commission grants KIUC's Motion for Exemption from the CB Framework, pursuant to Part II.A.5 of the CB Framework; subject to the commission's right to reexamine at any time the exemption granted herein, consistent with the public interest or any change in circumstances involving KIUC's ownership structure.⁸

III.

Orders

THE COMMISSION ORDERS:

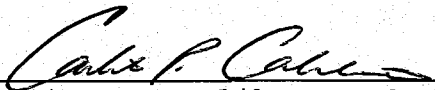
1. KIUC's Motion for Exemption from the CB Framework, filed on February 13, 2007, is granted, pursuant to Part II.A.5 of the CB Framework.


2. Unless ordered or directed otherwise, KIUC is exempt from the CB Framework adopted by the commission on December 8, 2006; subject to the commission's right to reexamine at any time the exemption granted herein, consistent with the public interest or any change in circumstances involving KIUC's ownership structure.

⁸The granting of KIUC's underlying request for an exemption from the CB Framework renders moot KIUC's alternative requests for: (1) an exemption from Ordering Paragraphs No. 2 and No. 3 of Decision and Order No. 23121; and (2) an extension of time to comply with the requirements set forth in the CB Framework and the related requirements set forth in Ordering Paragraphs No. 2 and No. 3.


DONE at Honolulu, Hawaii MAR 14 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0372.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23298 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

KENT D. MORIHARA, ESQ.
MORIHARA LAU & FONG LLP
841 Bishop Street, Suite 400
Honolulu, HI 96813

Counsel for KIUC

RANDALL H. HEE, P.E.
PRESIDENT AND CHIEF EXECUTIVE OFFICER
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766-2032

TIMOTHY BLUME
KAUAI ISLAND UTILITY COOPERATIVE
4463 Pahe'e Street
Lihue, HI 96766-2032

THOMAS W. WILLIAMS, JR. ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Counsel for HECO, HELCO, and MECO

Certificate of Service
Page 2

DEAN MATSUURA
DIRECTOR, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. BOX 2750
Honolulu, HI 96840-0001

WARREN S. BOLLMEIER II, PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place, #3816
Kaneohe, HI 96744



Karen Higashi

DATED: MAR 14 2007